

ASSEMBLY BILL

No. 1740

Introduced by Assembly Member Bigelow

February 14, 2014

An act to amend Section 4584 of the Public Resources Code, relating to forestry.

LEGISLATIVE COUNSEL'S DIGEST

AB 1740, as introduced, Bigelow. Timber harvest plans: exemptions.

The Z'berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations, as defined, unless a timber harvesting plan prepared by a registered professional forester has been submitted to the Department of Forestry and Fire Protection. The act authorizes the State Board of Forestry and Fire Protection to exempt from some or all of those provisions of the act a person engaging in specified forest management activities.

This bill would make technical, nonsubstantive changes to that exemption provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4584 of the Public Resources Code is
- 2 amended to read:
- 3 4584. Upon determining that the exemption is consistent with
- 4 the purposes of this chapter, the board may exempt from this
- 5 chapter, or portions of this chapter, a person engaged in forest
- 6 management whose activities are limited to any of the following:

1 (a) The cutting or removal of trees for the purpose of
2 constructing or maintaining a right-of-way for utility lines.

3 (b) The planting, growing, nurturing, shaping, shearing, removal,
4 or harvest of immature trees for Christmas trees or other ornamental
5 purposes or minor forest products, including fuelwood.

6 (c) The cutting or removal of dead, dying, or diseased trees of
7 any size.

8 (d) Site preparation.

9 (e) Maintenance of drainage facilities and soil stabilization
10 treatments.

11 (f) Timber operations on land managed by the Department of
12 Parks and Recreation.

13 (g) (1) The one-time conversion of less than three acres to a
14 nontimber use. A person, whether acting as an individual or as a
15 member of a partnership, or as an officer or employee of a
16 corporation or other legal entity, shall not obtain more than one
17 exemption pursuant to this subdivision in a five-year period. If a
18 partnership has as a member, or if a corporation or other legal
19 entity has as an officer or employee, a person who has received
20 this exemption within the past five years, whether as an individual
21 or as a member of a partnership, or as an officer or employee of a
22 corporation or other legal entity, then that partnership, corporation,
23 or other legal entity is not eligible for this exemption. "Person,"
24 for purposes of this subdivision, means an individual, partnership,
25 corporation, or other legal entity.

26 (2) (A) Notwithstanding Section 4554.5, the board shall adopt
27 regulations that do all of the following:

28 (i) Identify the required documentation of a bona fide intent to
29 complete the conversion that an applicant will need to submit in
30 order to be eligible for the exemption in paragraph (1).

31 (ii) Authorize the department to inspect the sites approved in
32 conversion applications that have been approved on or after January
33 1, 2002, in order to determine that the conversion was completed
34 within the two-year period described in subparagraph (B) of
35 paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of
36 the California Code of Regulations.

37 (iii) Require the exemption pursuant to this subdivision to expire
38 if there is a change in timberland ownership. The person who
39 originally submitted an application for an exemption pursuant to
40 this subdivision shall notify the department of a change in

1 timberland ownership on or before five calendar days after a change
2 in ownership.

3 (iv) The board may adopt regulations allowing a waiver of the
4 five-year limitation described in paragraph (1) upon finding that
5 the imposition of the five-year limitation would impose an undue
6 hardship on the applicant for the exemption. The board may adopt
7 a process for an appeal of a denial of a waiver.

8 (B) The application form for the exemption pursuant to
9 paragraph (1) shall prominently advise the public that a violation
10 of the conversion exemption, including a conversion applied for
11 in the name of someone other than the person or entity
12 implementing the conversion in bona fide good faith, is a violation
13 of this chapter and penalties may accrue up to ten thousand dollars
14 (\$10,000) for each violation pursuant to Article 8 (commencing
15 with Section 4601).

16 (h) ~~Easements~~—*An easement* granted by a right-of-way
17 construction agreement administered by the federal government
18 if timber sales and operations within or affecting ~~these areas~~ *the*
19 *area* are reviewed and conducted pursuant to the National
20 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

21 (i) (1) The cutting or removal of trees in compliance with
22 Sections 4290 and 4291 that eliminates the vertical continuity of
23 vegetative fuels and the horizontal continuity of tree crowns for
24 the purpose of reducing flammable materials and maintaining a
25 fuel break for a distance of not more than 150 feet on each side
26 from an approved and legally permitted structure that complies
27 with the California Building Standards Code, when that cutting or
28 removal is conducted in compliance with this subdivision. For
29 purposes of this subdivision, an “approved and legally permitted
30 structure” includes only structures that are designed for human
31 occupancy and garages, barns, stables, and structures used to
32 enclose fuel tanks.

33 (2) (A) The cutting or removal of trees pursuant to this
34 subdivision is limited to cutting or removal that will result in a
35 reduction in the rate of fire spread, fire duration and intensity, fuel
36 ignitability, or ignition of the tree crowns and shall be in
37 accordance with any regulations adopted by the board pursuant to
38 this section.

39 (B) Trees shall not be cut or removed pursuant to this
40 subdivision by the clearcutting regeneration method, by the seed

1 tree removal step of the seed tree regeneration method, or by the
2 shelterwood removal step of the shelterwood regeneration method.

3 (3) (A) Surface fuels, including logging slash and debris, low
4 brush, and deadwood, that could promote the spread of wildfire
5 shall be chipped, burned, or otherwise removed from all areas of
6 timber operations within 45 days from the date of commencement
7 of timber operations pursuant to this subdivision.

8 (B) (i) All surface fuels that are not chipped, burned, or
9 otherwise removed from all areas of timber operations within 45
10 days from the date of commencement of timber operations may
11 be determined to be a nuisance and subject to abatement by the
12 department or the city or county having jurisdiction.

13 (ii) The costs incurred by the department, city, or county, as the
14 case may be, to abate the nuisance upon a parcel of land subject
15 to the timber operations, including, but not limited to, investigation,
16 boundary determination, measurement, and other related costs,
17 may be recovered by special assessment and lien against the parcel
18 of land by the department, city, or county. The assessment may
19 be collected at the same time and in the same manner as ordinary
20 ad valorem taxes, and shall be subject to the same penalties and
21 the same procedure and sale in case of delinquency as is provided
22 for ad valorem taxes.

23 (4) All timber operations conducted pursuant to this subdivision
24 shall conform to applicable city or county general plans, city or
25 county implementing ordinances, and city or county zoning
26 ordinances. This paragraph does not authorize the cutting, removal,
27 or sale of timber or other solid wood forest products within an area
28 where timber harvesting is prohibited or otherwise restricted
29 pursuant to the rules or regulations adopted by the board.

30 (5) (A) The board shall adopt regulations, initially as emergency
31 regulations in accordance with subparagraph (B), that the board
32 considers necessary to implement and to obtain compliance with
33 this subdivision.

34 (B) The emergency regulations adopted pursuant to
35 subparagraph (A) shall be adopted in accordance with the
36 Administrative Procedure Act (Chapter 3.5 (commencing with
37 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
38 Code). The adoption of emergency regulations shall be deemed to
39 be an emergency and necessary for the immediate preservation of
40 the public peace, health, and safety, or general welfare.

1 (j) (1) The harvesting of trees, limited to those trees that
2 eliminate the vertical continuity of vegetative fuels and the
3 horizontal continuity of tree crowns, for the purpose of reducing
4 the rate of fire spread, duration and intensity, fuel ignitability, or
5 ignition of tree crowns.

6 (2) The board may authorize an exemption pursuant to paragraph
7 (1) only if the tree harvesting will decrease fuel continuity and
8 increase the quadratic mean diameter of the stand, and the tree
9 harvesting area will not exceed 300 acres.

10 (3) Except as provided in paragraph (11), the notice of
11 exemption, which shall be known as the Forest Fire Prevention
12 Exemption, may be authorized only if all of the conditions specified
13 in paragraphs (4) to (10), inclusive, are met.

14 (4) A registered professional forester shall prepare the notice
15 of exemption and submit it to the director, and include a map of
16 the area of timber operations that complies with the requirements
17 of paragraphs (1), (3), (4), and (7) to (12), inclusive, of subdivision
18 (x) of Section 1034 of Title 14 of the California Code of
19 Regulations.

20 (5) (A) The registered professional forester who submits the
21 notice of exemption shall include a description of the preharvest
22 stand structure and a statement of the postharvest stand stocking
23 levels.

24 (B) The level of residual stocking shall be consistent with
25 maximum sustained production of high-quality timber products.
26 The residual stand shall consist primarily of healthy and vigorous
27 dominant and codominant trees from the preharvest stand. Stocking
28 shall not be reduced below the standards required by any of the
29 following provisions that apply to the exemption at issue:

30 (i) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
31 (1) of subdivision (a) of Section 913.3 of Title 14 of the California
32 Code of Regulations.

33 (ii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
34 (1) of subdivision (a) of Section 933.3 of Title 14 of the California
35 Code of Regulations.

36 (iii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
37 (1) of subdivision (a) of Section 953.3 of Title 14 of the California
38 Code of Regulations.

39 (C) If the preharvest dominant and codominant crown canopy
40 is occupied by trees less than 14 inches in diameter at breast height,

1 a minimum of 100 trees over four inches in diameter at breast
2 height shall be retained per acre for Site I, II, and III lands, and a
3 minimum of 75 trees over four inches in diameter at breast height
4 shall be retained per acre for Site IV and V lands.

5 (6) (A) The registered professional forester who submits the
6 notice shall include selection criteria for the trees to be harvested
7 or the trees to be retained. In the development of fuel reduction
8 prescriptions, the registered professional forester should consider
9 retaining habitat elements, where feasible, including, but not
10 limited to, ground level cover necessary for the long-term
11 management of local wildlife populations.

12 (B) All trees that are harvested or all trees that are retained shall
13 be marked or sample marked by or under the supervision of a
14 registered professional forester before felling operations begin.
15 The board shall adopt regulations for sample marking for this
16 section in Title 14 of the California Code of Regulations. Sample
17 marking shall be limited to homogenous forest stand conditions
18 typical of plantations.

19 (7) (A) The registered professional forester submitting the
20 notice, upon submission of the notice, shall provide a confidential
21 archaeology letter that includes all the information required by
22 any of the following provisions that apply to the exemption at
23 issue:

24 (i) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
25 of Section 929.1 of Title 14 of the California Code of Regulations,
26 and include site records if required pursuant to subdivision (g) of
27 that section or pursuant to Section 929.5 of Title 14 of the
28 California Code of Regulations.

29 (ii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
30 of Section 949.1 of Title 14 of the California Code of Regulations,
31 and include site records if required pursuant to subdivision (g) of
32 that section or pursuant to Section 949.5 of Title 14 of the
33 California Code of Regulations.

34 (iii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
35 of Section 969.1 of Title 14 of the California Code of Regulations,
36 and include site records if required pursuant to subdivision (g) of
37 that section or pursuant to Section 969.5 of Title 14 of the
38 California Code of Regulations.

39 (B) The director shall submit a complete copy of the confidential
40 archaeological letter and two copies of all required archaeological

1 or historical site records to the appropriate Information Center of
2 the California Historical Resource Information System within 30
3 days from the date of notice submittal to the director. Before
4 submitting the notice to the director, the registered professional
5 forester shall send a copy of the notice to Native Americans, as
6 defined in Section 895.1 of Title 14 of the California Code of
7 Regulations.

8 (8) Only trees less than 18 inches in stump diameter, measured
9 at eight inches above ground level, may be removed. However,
10 within 500 feet of a legally permitted structure, or in an area
11 prioritized as a shaded fuel break in a community wildfire
12 protection plan approved by a public fire agency, if the goal of
13 fuel reduction cannot be achieved by removing trees less than 18
14 inches in stump diameter, trees less than 24 inches in stump
15 diameter may be removed if that removal complies with this section
16 and is necessary to achieve the goal of fuel reduction. A fuel
17 reduction effort shall not violate the canopy closure regulations
18 adopted by the board on June 10, 2004, and as those regulations
19 may be amended.

20 (9) (A) This subparagraph applies to areas within 500 feet of
21 a legally permitted structure and in areas prioritized as a shaded
22 fuel break in a community wildfire protection plan approved by a
23 public fire agency. The board shall adopt regulations for the
24 treatment of surface and ladder fuels in the harvest area, including
25 logging slash and debris, low brush, small trees, and deadwood,
26 that could promote the spread of wildfire. The regulations adopted
27 by the board shall be consistent with the standards in the board's
28 "General Guidelines for Creating Defensible Space" described in
29 Section 1299.03 of Title 14 of the California Code of Regulations.
30 Postharvest standards shall include vertical spacing between fuels,
31 horizontal spacing between fuels, maximum depth of dead ground
32 surface fuels, and treatment of standing dead fuels, as follows:

33 (i) Ladder and surface fuels shall be spaced to achieve a vertical
34 clearance distance of eight feet or three times the height of the
35 postharvest fuels, whichever is the greater distance, measured from
36 the base of the live crown of the postharvest dominant and
37 codominant trees to the top of the surface fuels.

38 (ii) Horizontal spacing shall achieve a minimum separation of
39 two to six times the height of the postharvest fuels, increasing

1 spacing with increasing slope, measured from the outside branch
2 edges of the fuels.

3 (iii) Dead surface fuel depth shall be less than nine inches.

4 (iv) Standing dead or dying trees and brush generally shall be
5 removed. That material, along with live vegetation associated with
6 the dead vegetation, may be retained for wildlife habitat when
7 isolated from other vegetation.

8 (B) This subparagraph applies to all areas not described in
9 subparagraph (A).

10 (i) The postharvest stand shall not contain more than 200 trees
11 over three inches in diameter per acre.

12 (ii) Vertical spacing shall be achieved by treating dead fuels to
13 a minimum clearance distance of eight feet measured from the
14 base of the live crown of the postharvest dominant and codominant
15 trees to the top of the dead surface fuels.

16 (iii) All logging slash created by the timber operations shall be
17 treated to achieve a maximum postharvest depth of nine inches
18 above the ground.

19 (C) The standards required by subparagraphs (A) and (B) shall
20 be achieved on approximately 80 percent of the treated area. The
21 treatment shall include chipping, removing, or other methods
22 necessary to achieve the standards. Ladder and surface fuel
23 treatments, for any portion of the exemption area where timber
24 operations have occurred, shall be done within 120 days from the
25 start of timber operations on that portion of the exemption area or
26 by April 1 of the year following surface fuel creation on that
27 portion of the exemption area if the surface fuels are burned.

28 (10) Timber operations shall comply with the requirements of
29 paragraphs (1) to (10), inclusive, of subdivision (b) of Section
30 1038 of Title 14 of the California Code of Regulations. Timber
31 operations in the Lake Tahoe region shall comply instead with the
32 requirements of paragraphs (1) to (16), inclusive, of subdivision
33 (f) of Section 1038 of Title 14 of the California Code of
34 Regulations.

35 (11) A notice of exemption, which shall be known as the Forest
36 Fire Prevention Pilot Project Exemption, may be authorized if all
37 of the following conditions are met:

38 (A) The conditions specified in paragraphs (2), (4), (6), (7), and
39 (10) are met.

1 (B) Only trees less than 24 inches in stump diameter, measured
2 at eight inches above ground level, may be removed. A fuel
3 reduction effort shall not violate the canopy closure regulations
4 adopted by the board on June 10, 2004, and as those regulations
5 may be amended.

6 (C) (i) The registered professional forester who submits the
7 notice of exemption shall include a description of the preharvest
8 stand structure and a statement of the postharvest stand stocking
9 levels.

10 (ii) The level of residual stocking shall be consistent with
11 maximum sustained production of high-quality timber products.
12 The residual stand shall consist primarily of healthy and vigorous
13 dominant and codominant trees from the preharvest stand. Where
14 present prior to operations, the overstory canopy closure for trees
15 greater than 12 inches in diameter at breast height shall not be
16 reduced below 50 percent. Stocking shall be met with the largest
17 trees available prior to harvest and shall not be reduced below the
18 standards required by any of the following provisions that apply
19 to the exemption at issue:

20 (I) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
21 (1) of subdivision (a) of Section 913.3 of Title 14 of the California
22 Code of Regulations.

23 (II) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
24 (1) of subdivision (a) of Section 933.3 of Title 14 of the California
25 Code of Regulations.

26 (III) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
27 (1) of subdivision (a) of Section 953.3 of Title 14 of the California
28 Code of Regulations.

29 (iii) If the preharvest dominant and codominant crown canopy
30 is occupied by trees less than 14 inches in diameter at breast height,
31 a minimum of 100 trees over four inches in diameter at breast
32 height shall be retained per acre for Site I, II, and III lands, and a
33 minimum of 75 trees over four inches in diameter at breast height
34 shall be retained per acre for Site IV and V lands. The retained
35 trees shall be the largest trees available prior to harvest.

36 (D) The activities conducted pursuant to this paragraph occur
37 in the Sierra Nevada Region as defined in subdivision (f) of Section
38 33302, in Modoc, Siskiyou, or Trinity Counties, or in any
39 combination of these areas.

1 (E) All activities conducted pursuant to this paragraph occur
2 within the most recent version of the department's Fire Hazard
3 Severity Zone Map in the moderate, high, and very high fire threat
4 zones.

5 (F) The department shall maintain records regarding the use of
6 the exemption granted in this paragraph in order to evaluate the
7 impact of the exemption on fuel reduction and natural resources
8 in areas where the exemption has been used.

9 (G) This paragraph shall become inoperative three years after
10 the effective date of regulations adopted by the board implementing
11 this paragraph.

12 (12) After the timber operations are complete, the department
13 shall conduct an onsite inspection to determine compliance with
14 this subdivision and whether appropriate enforcement action should
15 be initiated.